

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

**J.W., A MINOR, BY AND THROUGH AMANDA WILLIAMS,
GUARDIAN AND NEXT FRIEND**

PLAINTIFF

VS

CASE NUMBER 3:21-cv-00663-CWR-LGI

THE CITY OF JACKSON, ET AL.

DEFENDANTS

**JOINT RESPONSE TO MOTION TO CONSOLIDATE
CASES NUMBERED 3:21-663, 3:21-667, AND 3:22-171**

The City of Jackson, Mississippi, Chokwe A. Lumumba, Robert Miller, Tony Yarber, Kishia Powell, and Jerriot Smash (collectively, the City Defendants) do not oppose consolidation, so long as they do not lose the ability to assert substantive rights and defenses they would have were the matters to proceed separately.¹ *See generally Branch Banking & Trust Co. v. Price*, No. 2:11cv23-KS-MTP, 2011 U.S. Dist. LEXIS 129367, *8 (S.D. Miss. Nov. 8, 2011) (citing *Miller v. U.S. Postal Serv.*, 729 F.2d 1033, 1036 (5th Cir. 1984)) (holding consolidation does not . . . deprive a party of any substantial rights that [they] may have had if the actions had proceeded separately . . . ”). Stated differently, by agreeing to consolidation, the City Defendants do not, nor do they intend to, waive the arguments asserted in their pleadings and dismissal briefing regarding the plaintiffs’ negligence claims. *See, e.g.*, City of Jackson’s Mem. In Supp. of Mot. J. on the Pleadings [Doc. 81] at 11-12 (arguing the plaintiffs did not file timely presuit notice). The City Defendants also do not waive their substantive right to challenge the timeliness of any new party’s MTCA presuit notice.

¹ On May 13, 2022, the Court issued an order staying pursuant to Local Uniform Civil Rule for the Northern and Southern Districts of Mississippi 16(b)(3)(B). The City Defendants believe the stay should remain until after the various parties’ qualified-immunity motions are resolved in separate, or the consolidated, proceedings.

In their briefing on the motion to consolidate, the plaintiffs state, “Nothing about full consolidation deprives Defendants from asserting any defense in their motion practice as a subset of . . . consolidated cases.” *E.g.*, Mem. in Supp. Mot. to Consolidate [Doc. 96] at 16. Counsel for the plaintiffs and the City Defendants have conferred and agreed consolidation should not impact the City Defendants’ ability to challenge the timeliness of any plaintiff’s presuit notice.²

In light of that agreement, subject to the necessary approvals, the City Defendants believe the parties may present to the Court a proposed order for consolidating the separate matters that avoids unnecessary cost or delay and eliminates unnecessary repetition and confusion, while preserving the respective parties’ substantive rights and defenses as if the matters were to proceed separately.

RESPECTFULLY SUBMITTED, this the 10th day of June, 2022.

/s/ Clarence Webster, III
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² The City Defendants see no reason to create a dispute where none exists. Based on plaintiffs’ counsel’s representations during the hearing before the Court on May 27, 2022, the City Defendants do not believe the plaintiffs are requesting a single, consolidated trial for all current and future plaintiffs. If the City Defendants are incorrect, they respectfully would request leave to brief that issue.

/s/ LT Allen
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CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2022, I electronically filed the foregoing pleading with the Clerk of the Court using the CM/ECF system which served a copy of the foregoing on all counsel of record.

/s/ Clarence Webster, III
CLARENCE WEBSTER, III